

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ANTHONY MARTIN,

Plaintiff

Case No. 2:20-cv-2300-RFB-NJK

ORDER

v.

BRIAN WILLIAMS, *et al.*,

Defendants

I. DISCUSSION

On December 18, 2020, Plaintiff, an inmate in the custody of the Nevada Department of Corrections (“NDOC”), submitted a civil rights complaint under 42 U.S.C. § 1983 and filed an application to proceed *in forma pauperis*. Docket Nos. 1-1, 1. Plaintiff’s complaint and Plaintiff’s application to proceed *in forma pauperis* are both incomplete.

Plaintiff's Complaint

Upon review, the Court notes that Plaintiff did not sign the complaint, Docket No. 1-1. Under Rule 11 of the Federal Rules of Civil Procedure, a plaintiff who is not represented by counsel is required to sign his complaint. Fed. R. Civ. P. 11(a). Because Plaintiff did not sign the complaint, the Court cannot consider it.

As such, the Court grants Plaintiff a **one-time extension** to submit a signed amended complaint to the Court on or before **February 22, 2021**. If Plaintiff chooses to file an amended complaint, he is advised that an amended complaint supersedes (replaces) the original complaint and, thus, the amended complaint must be complete in itself. *See Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989). Therefore, a mere signature page will not be sufficient. Plaintiff should file the amended complaint on this Court’s approved prisoner civil rights form, and it must be entitled “First Amended Complaint.”

Plaintiff's Application to Proceed in Forma Pauperis

Under 28 U.S.C. § 1915(a)(2) and Local Rule LSR 1-2, an inmate seeking to begin a civil

1 action in this Court may apply to proceed *in forma pauperis* in order to file the civil action without
 2 prepaying the full \$402 filing fee. To apply for *in forma pauperis* status, the inmate must submit
 3 all three of the following documents to the Court:

- 4 (1) a completed **Application to Proceed in Forma Pauperis for Inmate**, this Court's
 5 approved form (i.e. pages 1 through 3 with the inmate's two signatures on page 3),
- 6 (2) a **Financial Certificate** properly signed by both the inmate and a prison or jail official
 7 (i.e. page 4 of this Court's approved form), and
- 8 (3) a copy of the **inmate's prison or jail trust fund account statement for the previous**
 9 **six-month period.**

10 Plaintiff has not affixed his two required signatures on page 3 of his application to proceed
 11 *in forma pauperis* or provided a Financial Certificate and inmate account statement for the
 12 previous six-month period with his application. Accordingly, the Court denies Plaintiff's
 13 application to proceed *in forma pauperis*, Docket No. 1, without prejudice because the application
 14 is incomplete.

15 The Court will grant Plaintiff a **one-time extension** until on or before **February 22, 2021**,
 16 to file either a fully complete application to proceed *in forma pauperis* containing all three of the
 17 required documents or pay the full \$402 filing fee. Absent unusual circumstances, the Court will
 18 not grant any further extensions of time.

19 If Plaintiff does not file either a fully complete application to proceed *in forma pauperis*
 20 with all three required documents or pay the full \$402 filing fee on or before **February 22, 2021**,
 21 this case will be subject to dismissal without prejudice for Plaintiff to file a new case with the
 22 Court when Plaintiff is able to either acquire all three of the documents needed to file a fully
 23 complete application to proceed *in forma pauperis* or pays the full \$402 filing fee.

24 A dismissal without prejudice means Plaintiff does not give up the right to refile the case
 25 with the Court, under a new case number, when Plaintiff has all three documents needed to submit
 26 with the application to proceed *in forma pauperis*. Plaintiff may also choose not to file an
 27 application to proceed *in forma pauperis* and instead pay the full filing fee of \$402 on or before
 28 **February 22, 2021** to proceed with this case.

1 **II. CONCLUSION**

2 For the foregoing reasons, IT IS ORDERED that the Clerk of the Court will send to
3 Plaintiff the approved form for filing a § 1983 complaint, instructions for the same, and a copy of
4 his original complaint, Docket No. 1-1. If Plaintiff files an amended complaint, he should use the
5 Court's approved form and he must write the words "First Amended" above the words "Civil
6 Rights Complaint" in the caption.

7 IT IS FURTHER ORDERD that if Plaintiff chooses to file a signed amended complaint,
8 Plaintiff will file the signed amended complaint to this Court on or before **February 22, 2021**.

9 IT IS FURTHER ORDERED that, if Plaintiff does not file a signed amended complaint on
10 or before **February 22, 2021**, this case will be subject to dismissal without prejudice for Plaintiff
11 to refile the case with the Court, under a new case number, when Plaintiff is able to file a signed
12 amended complaint.

13 IT IS FURTHER ORDERED that Plaintiff's application to proceed *in forma pauperis*,
14 Docket No. 1, is denied without prejudice to file either a new and fully complete application to
15 proceed *in forma pauperis* with all three documents or pay the full \$402 filing fee.

16 IT IS FURTHER ORDERED that the Clerk of the Court will send Plaintiff the approved
17 form application to proceed *in forma pauperis* by an inmate, as well as the document entitled
18 information and instructions for filing an *in forma pauperis* application.

19 IT IS FURTHER ORDERED that on or before **February 22, 2021**, Plaintiff will either
20 pay the full \$402 filing fee for a civil action (which includes the \$350 filing fee and the \$52
21 administrative fee) or file with the Court:

22 (1) a completed **Application to Proceed in Forma Pauperis for Inmate** on this Court's
23 approved form (i.e. pages 1 through 3 of the form with the inmate's two signatures on page
24 3),

25 (2) a **Financial Certificate** properly signed by both the inmate and a prison or jail official
26 (i.e. page 4 of this Court's approved form), and

27 (3) a copy of the **inmate's prison or jail trust fund account statement for the previous**
28 **six-month period.**

1 IT IS FURTHER ORDERED that, if Plaintiff does not file a fully complete application to
2 proceed *in forma pauperis* with all three documents or pay the full \$402 filing fee for a civil action
3 on or before **February 22, 2021**, this case will be subject to dismissal without prejudice for
4 Plaintiff to refile the case with the Court, under a new case number, when Plaintiff has all three
5 documents needed to file a complete application to proceed *in forma pauperis* or pays the full \$402
6 filing fee.

7 IT IS SO ORDERED.

8 DATED: December 22, 2020

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12 Nancy J. Koppe
13 United States Magistrate Judge
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